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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/050,249	03/30/1998	HARUKI OKAMURA	OKAMURA=2B	6601

1444 7590 10/19/2010
BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

JIANG, DONG

ART UNIT	PAPER NUMBER
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1646

MAIL DATE	DELIVERY MODE
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10/19/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/050,249	Applicant(s) OKAMURA ET AL.	
	Examiner DONG JIANG	Art Unit 1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 October 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: No amendment accompanied the request for reconsideration.

/Dong Jiang/
Primary Examiner, Art Unit 1646

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 93, 99, 100, 104, 106, 107, 116, 121 and 122 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (Infect. Immun. 61: 64-70, 1993), and further in view of Campbell, A. (Laboratory Techniques in Biochemistry And Molecular Biology, Volume 13, Chapter 1, pages 1-33, 1984), for the reasons of record set forth in the previous Office Actions mailed on 2/4/10, and 8/6/10.

The request for reconsideration has been fully considered. Applicants argument is not persuasive for the following reasons: Applicants argue, in the response filed on 8/6/10, that Nakamura clearly states that the cells producing the factor had not yet been identified at the time Nakamura was published, and it is also clear that the source of the gene encoding IGIF was unknown, therefore, it would be impossible even for a skilled person to identify the gene without prior knowledge about the source of the gene. This argument is not persuasive because applicants statement is incorrect as many genes were identified without prior knowledge about the source of the genes, and recombinant technology of gene cloning does not rely on the source of a gene, and this technology was well established and readily available at the time the present invention was filed. Applicants further argue that it is difficult to submit publications which show such negative data, because negative data is not normally published; that Okamura only identified the producing cells two years later is indirect circumstantial evidence that Nakamura or others had repeatedly failed to identify the cells that produce IGIF or the gene encoding IGIF during that two year period; and that Campbell teaches that it would be difficult in practice to obtain a monoclonal antibody without a purified antigen. This argument is not persuasive because applicants have not shown any evidence that the claimed invention satisfies a long-felt need which was recognized, persistent, and not solved by others, and mere argument that the two years is indirect circumstantial evidence that Nakamura or others had repeatedly failed to identify the cells is unsound. Further, more importantly, gene cloning is not dependent on identification of the cell source that expresses the gene. Furthermore, Campbell teaches it may be true in general that no purification procedures are required (while it may not be true in practice with any specific antigenic mixture). Nakamura's factor was semi-purified, and it was not "any specific antigenic mixture".